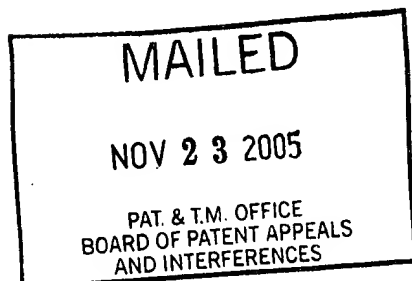




UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge Fred E. McKelvey
Telephone: 571-272-9797
Facsimile: 571-273-0042



Applicants: STERN
Application No.: 09/930,433
Filed: 08/15/01
For: Methods of use for peroxydinitrite decomposition catalysts, pharmaceutical compositions therefor

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,388.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/Fred E. McKelvey/
FRED E. McKELVEY
Senior Administrative Patent Judge

Filed by:

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Filed 23 November 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Senior Administrative Patent Judge McKelvey)

MICHAEL K. STERN and DANIELA SALVEMINI,

Junior Party
(Reissue Application 09/930,433),

v.

IRWIN FRIDOVICH and STEFAN I. LIOCHEV,

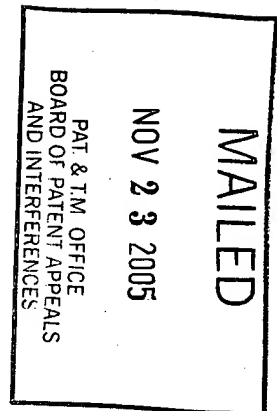
Senior Party
(Patent 6,103,714).

Patent Interference 105,388
Technology Center 1600

DECLARATION - Bd.R. 203(d)

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the reissue application, patent, count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.



Part B. Judge managing the interference

Senior Administrative Patent Judge McKelvey has been designated to manage the interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

Part C. Standing order

A Trial Section STANDING ORDER (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

Part D. Initial conference call

A telephone conference call to discuss the interference is set for 1:30 p.m. (1330 hours Eastern time) on Wednesday 11 January 2006 (the Board will initiate the call).

No later than noon (1200 hours Eastern time) on Friday, 06 January 2006, each party shall file by facsimile and no later than 5:00 p.m. (1700 hours Eastern time) on 06 January 2006, serve by facsimile a list of the motions (Bd. R. 120; Bd. R. 204; STANDING ORDER ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Michael K. Stern, Clayton, MO
Daniela Salvemini, Ballwin, MO

Application: Application 09/930,433,
filed 15 August 2001 to **reissue**
U.S. Patent 6,245,758 B1,
granted 12 June 2001 based on
application 08/709,788,
filed 09 September 1996

Title: Methods of use for peroxynitrite
decomposition catalysts, pharmaceutical
compositions therefor

Assignee: Pharmacia Corporation

Accorded Benefit:¹ U.S. Patent 6,245,758 B1,
granted 12 June 2001 based on
application 08/709,788,
filed 09 September 1996

Application 08/431,593,
filed 01 May 1995

¹ Stern claims benefit of application 08/242,498, filed 13 May 1994. If Stern believes that it is entitled to benefit for the purpose of priority of application 08/242,498, it may list a motion for benefit when it files a list of motions. 37 CFR § 41.204(b) (2005).

Senior Party

Named Inventors: Irwin Fridovich, Durham, NC
Stefan I. Liochev, Durham, NC

Patent: U.S. Patent 6,103,714,
granted 15 August 2000 based on
application 08/685,529,
filed 24 July 1996

Title: Oxidoreductase activity of manganic
porphyrins

Assignee: Duke University

Accorded Benefit: Application 08/309,318,
filed 20 September 1994

The senior party is assigned exhibit numbers 1001-1999.
Bd.R. 154(c)(1).

The junior party is assigned exhibit numbers 2001-2999.
Bd.R. 154(c)(1).

The senior party is responsible for initiating settlement
discussions. STANDING ORDER ¶ 18.

Part F. Count and claims of the parties

Count 1

A method according to claim 1² of U.S. Patent 6,103,714.

The claims of the parties are:

Stern: 23-33

Fridovich: 1-19

The claims of the parties which correspond to Count 1 are:

Stern: 23-33

Fridovich: 1-3, 6-7, 10-13 and 16-17

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Stern: None

Fridovich: 4-5, 8-9 and 14-15³

² Claim 1 of the patent reads:

A method of effecting oxidoreduction in a patient comprising administering to said patient a metallic porphyrin complex having substitutes on the methine carbons of the porphyrin, in an effective, non-toxic amount, so that said complex is reduced by a reductant present in said patient and reoxidized by O₂ present in said patient.

Claim 23 of reissue application 09/930,433 is the same as claim 1 of the patent.

³ Neither the reissue applicant nor the examiner has explained why these claims should be designated as corresponding to the count.

Part G. Heading to be used on papers

The heading in STANDING ORDER Form 1 must be used on all papers filed in this interference. See STANDING ORDER ¶ 7.2.1. The administrative patent judge and parties must be indicated as follows:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Senior Administrative Patent Judge McKelvey)

MICHAEL K. STERN and DANIELA SALVEMINI,

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(Reissue Application 09/930,433),

v.

IRWIN FRIDOVICH and STEFAN I. LIOCHEV,

Senior Party
(Patent 6,103,714).

Patent Interference 105,388
Technology Center 1600

Part H. Order form for requesting file copies

When requesting copies of files, use of STANDING ORDER Form 4 will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

Part I. Required paragraph for affidavits and declarations

The Board has recently experienced a rash of cases in which a witness has belatedly advanced reasons why he or she would be unable to appear for cross examination at a reasonable time and place in the United States. Consequently, the Board is requiring the following paragraph to be included on the signature page of all affidavits (including declarations) filed in this case to prevent surprise and hardship to the party relying on the testimony of the witness:

In signing this affidavit/declaration, I recognize that the affidavit/declaration will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

/Fred E. McKelvey/
FRED E. McKELVEY,
Senior Administrative Patent Judge⁴

23 November 2005
Alexandria, VA

Enc:

STANDING ORDER (Paper 2)
Examiner's Form PTO-850 and remarks
DVD program
e-filing program
Maintenance fee data for U.S. Patent 6,103,714
(Fee Code 2551 is for payment of a maintenance fee)
Bibliographic data
Request for interference in 09/930,433
Assent of assignee to reissue and power of attorney
in 09/930,433
Copy claims 23-33 in application 09/930,433
Copy U.S. Patent 6,245,758
Copy U.S. Patent 6,103,714

⁴ As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, in this case papers originating at the Board will not have signatures. The signature requirements for the parties have not changed. See, e.g., 37 C.F.R. § 10.18.

cc (via overnight delivery):

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(real party in interest
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